

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 19 OF 2002

Mr. Jitendra Sansgiri
alias Jit alias Munna
r/o H-984 Alto Torda,
Porvorim
at present at the
Police Lock-up
Police Station.

... Appellant.

versus

State
(through the Inspector
of Police) Porvorim
Police Station,
Porvorim, Bardez-Goa.

... Respondent.

Mr. S. G. Dessai, Senior Advocate with Mr. Arun Bras
de Sa, Advocate for the Appellant.

Mr. S. N. Sardesai, Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 7TH AUGUST, 2003.

ORAL JUDGMENT

The Appellant/Accused, who is convicted for
an offence punishable under Sections 498-A and 306 of
the Indian Penal Code and sentenced to undergo
Rigorous Imprisonment for 1 1/2 years and to pay fine
of Rs.3000/- in default to undergo Simple Imprisonment
for 1 month and to undergo Rigorous Imprisonment for 5

years and to pay fine of Rs.5000/- in default to undergo Simple Imprisonment for 2 months by the IInd Additional Sessions Judge, Panaji, by Judgment dated 22nd April, 2002, in Sessions Case No. 31 of 2000, has filed this Appeal challenging the conviction and sentence as imposed.

2. The facts in brief as are necessary for the decision of this Appeal are set out hereunder:-

P.W.15, P.I. Anand Virnodkar, was attached to the Porvorim Police Station as Officer In-charge. On 1st September, 1999, a wireless message was received from the Police at the Casualty Department of the Goa Medical College that a patient named Jyotika Sanzgiri aged about 23 years was admitted in Ward No.115 as a case of poisoning. The said wireless message is at Exh.52. Vide Exh.53, P.W.15, P.I. Anand Virnodkar, marked a wireless message to the Police at the Casualty Department to ascertain whether Jyotika Sanzgiri was in a fit condition to give her statement. P.W.15, P.I. Anand Virnodkar, then proceeded to the residence of the said Jyotika Sanzgiri which was said to be at Alto Torda, Porvorim, Goa. Since, the house was closed, P.W.15, P.I. Anand Virnodkar, recorded the statements of Monica Upadhy and Edwin Pinto who had shifted Jyotika Sanzgiri to

the hospital. On 2nd September, 1999, P.W.15, P.I. Anand Virnodkar, received a wireless message at Exh.54 informing him that Jyotika Sanzgiri had expired on 2nd September, 1999. He then registered an unnatural death(U/D No.31/99) under Section 174 of the Code of Criminal Procedure. He summoned P.W.12, Narayan Narvekar, Deputy Collector to conduct an Inquest Panchanama as the death was within 7 years of marriage. P.W.12, Narayan Narvekar, accordingly conducted the Inquest Panchanama at Exh.25 in the presence of Panch P.W.5, Umesh Khalap. P.W.15, P.I. Anand Virnodkar, then proceeded to the house of the deceased and in the presence of two panch witnesses broke open the lock of the house and conducted the scene of the offence panchanama at Exh.8 in the presence of P.W.1, Naresh Kauthankar. From the scene of the offence, he attached a steel tumbler M.O.3, a towel stained with vomit M.O.1, one empty plastic can M.O.2, a handbag containing mangalsutra M.O.4 and a note pad containing the suicide note M.O.5. On 3rd September, 1999, the mother of the deceased P.W.2, Ujwala Sakhalkar, lodged a complaint at Exh.16. On the basis of the said complaint, P.W.15, P.I. Anand Virnodkar, registered an offence under Sections 498-A and 306 of the Indian Penal Code. Letters produced by P.W.2, Ujwala Sakhalkar, alleged to have been written by the deceased, came to be attached on 18th

September, 1999 vide Attachment Panchanama at Exh.10 in the presence of P.W.1, Naresh Kauthankar. The letters and the suicide note were sent for opinion to the Government Examiner of Questioned Documents. According to P.W.13, Y.SuryaPrasad, the letters and the suicide note were written by the same person. His opinion is at Exh.42. The post mortem on the dead body of Jyotika Sanzgiri was conducted by P.W.14, Dr. Silvano Dias Sapeco, who by his Report at Exh.48 opined that death was due to pulmonary and cerebral oedema in a suspected case of organo phosphorous compounds poisoning. The Viscera was sent for examination to the Central Science Forensic Laboratory and the Report is at Exh.19. After completion of the investigation, a charge-sheet against the Appellant/Accused came to be filed.

3. On committal of the case to the Court of Sessions, charge at Exh.5 for an offence punishable under Sections 498-A and 306 of the Indian Penal Code came to be framed against the Appellant/Accused. The Appellant/Accused denied his guilt and claimed to be tried. The prosecution in support of its case examined 16 witnesses. The defence of the Appellant/Accused was that his father-in-law P.W.11, Ankush Sakhalkar, had two wives. P.W.2, Ujwala Sakhalkar, was his second wife. The Appellant/Accused

and deceased Jyotika Sanzgiri were helping P.W.2, Ujwala Sakhalkar, financially and had also arranged the wedding of P.W.4, Trupti Sakhalkar, younger sister of deceased Jyotika Sanzgiri. For the purpose of P.W.4, Trupti's marriage, he had spent Rs.50,000/-. His further defence is that quarrels between the Appellant/Accused and the deceased used to occur on account of financial difficulties. The Appellant/Accused examined himself as D.W.1 and also examined Vishal Mulgaonkar as D.W.2 and Sandeep Walwaikar as D.W.3.

4. The learned Trial Judge accepting the evidence on behalf of the prosecution recorded a finding that the Appellant/Accused was having extra-marital affairs due to which he was harassing the deceased and was not wanting her to live. The learned Trial Judge accordingly convicted and sentenced the Appellant/Accused.

5. With the assistance of the learned Counsel for the parties, I have perused the evidence on record. P.W.2, Ujwala Sakhalkar, mother of the deceased states that she had two daughters, one deceased Jyotika @ Anita and the other P.W.4, Trupti Sakhalkar. Deceased Jyotika Sanzgiri, was married to the Appellant/Accused on 19th December, 1992. The

marriage of deceased Jyotika and the Appellant/Accused was a love marriage which was initially opposed by the family members of deceased Jyotika. She further states that the Appellant/Accused would only allow her and P.W.4, Trupti Sakhalkar, to visit the deceased at her matrimonial house. After marriage, Appellant/Accused and deceased Jyotika were residing at Porvorim and thereafter, purchased a flat at Torda. On 27th January, 1994, Jyotika gave birth to a daughter named Trishala. She further states that she used to visit the deceased at her house twice or thrice a year and used to stay there for two to three days. During her stay, she saw that there used to be quarrels. She stated that she does not know the reasons for the said quarrels. According to her "there used to be only verbal fights between deceased and the Accused". She has further stated that on 8th August, 1999, she had, gone to the house of the deceased and stayed with them. There was a fight between the deceased and the Accused but she could not understand as they were talking in English. On 9th August, 1999, again, there was a quarrel in which the Accused slapped Jyotika on her face. She returned to her house on the same day and at about 10 p.m., during night, the Appellant/Accused came to her house along with his married sister and requested P.W.2, Ujwala Sakhalkar, to return to his house. She went back to

the house of the Appellant/Accused along with the Appellant/Accused and his sister. On reaching the house of the Appellant/Accused, the Appellant/Accused and his sister started abusing the deceased. When P.W.2, Ujwala Sakhalkar, tried to intervene, the Appellant/Accused and his sister told the deceased to give divorce. P.W.2, Ujwala Sakhalkar, therefore, returned back to her house on the same night. On the next day i.e. on 10th August, 1999, she went back to the house of the deceased to console her. She had given Rs.10,000/- to deceased for repairing the mangalsutra and Rs.20,000/- for making gold bangles since she had not given the deceased any ornaments at the time of marriage. She has identified the letters which are at Exh.10 colly as the letters in the handwriting of the deceased. She has also identified M.O.5, the note pad which contains the suicide note to be in the handwriting of the deceased. According to her, deceased Jyotika used to tell her that the Appellant/Accused was having a girlfriend and was having an extra-marital affair due to which there used to be quarrels between them. According to her, deceased was under tension on account of extra-marital affairs of the Appellant/Accused.

6. In the cross-examination, P.W.2, Ujwala Sakhalkar, has admitted that she is the second wife of

P.W.11, Ankush Sakhalkar. She has also admitted that his first wife is living and P.W.11, Ankush Sakhalkar, has three sons and one daughter from his first marriage. She has admitted that she was not aware that the first wife of her husband was living when she got married in 1971. She also admitted that her marriage was a love marriage and had learnt that P.W.11, Ankush Sakhalkar, was married only when she came to Goa. In the cross-examination, she has somersaulted by saying that there was no opposition from the side of the relations of the deceased to her marriage with the Appellant/Accused. She has also admitted that the family life of the deceased with the Appellant/Accused was cordial for some time. She has also admitted that P.W.11, Ankush Sakhalkar, father of the deceased had never visited the deceased and the Appellant/Accused. She has also admitted that the Appellant/Accused used to bring whatever was asked by the deceased. The entire expense of the family was being managed by the income of the Appellant/Accused. Deceased Jyotika used to ride a scooter and the Appellant/Accused had purchased a scooter for her. She has also admitted that immediately after marriage, the Appellant/Accused had purchased a scooter for the deceased. She has expressed her ignorance regarding the savings from out of the money given by the Appellant/Accused. She has denied her suggestion that

deceased Jyotika had given her Rs.30,000/- for the marriage of P.W.4, Trupti Sakhalkar, after taking loan of the said amount from Saraswat Bank. Certain contradictions were brought vis-a-vis the complaint at Exh.16 regarding P.W.2, Ujwala Sakhalkar, telephoning the deceased. She has also admitted that she has not stated in her complaint Exh.16 that the deceased had written letters to her in August, 1999. She has admitted not to have stated in her complaint that the Appellant/Accused and his married sister started abusing the deceased Jyotika when P.W.2, Ujwala Sakhalkar, reached the house of the Appellant/Accused on his request. She has admitted not to have stated in her complaint that the deceased Jyotika had disclosed to her that the Appellant/Accused was treating her properly initially but thereafter started quarrelling with her and even assaulting her. She has admitted "the Accused had never demanded dowry either before or after his marriage to Jyotika". She has also admitted that she has no personal knowledge about the so-called girlfriend of the Appellant/Accused. She has also admitted that the deceased was pursuing her studies in her maiden name and the Appellant/Accused was incurring the expenses for her studies. She has further admitted that the deceased had not informed her that the deceased was in family way and P.W.2 Ujwala Sakhalkar, had not received any

letter to that effect. She thereafter admitted that she had received such a letter in which the deceased Jyotika had revealed that she was pregnant and had undergone an abortion but that letter was received two years prior to the death of deceased Jyotika. She has pleaded ignorant regarding the pregnancy of the deceased Jyotika and the abortion about a month prior to her death.

7. P.W.4, Trupti Sakhalkar, younger sister of deceased Jyotika states that initially her parents were against the marriage of deceased Jyotika with the Appellant/Accused but thereafter, they agreed. According to her, there used to be quarrels between the deceased and the Appellant/Accused over minor things and also as the Appellant/Accused used to suspect her character. According to her, the Appellant/Accused did not give any money to the deceased Jyotika to make the expenditure and used to tell the deceased Jyotika to bring money from her mother. According to her, the deceased Jyotika had informed her that the Appellant/Accused used to receive telephone calls from a girl with whom he was having an affair. She produced on record a complaint at Exh.21 alleged to have been submitted by the deceased Jyotika to the Police complaining of ill treatment by the Appellant/Accused. She also produced

a photograph and a letter addressed by one Nadia to the Appellant/Accused. The photograph shows the Appellant/Accused with one girl. The learned Trial Court has held the photograph and the said letter to be inadmissible in evidence. In the further examination-in-chief, she has stated that the Appellant/Accused and the deceased Jyotika were suspecting each other. The deceased Jyotika used to suspect that the Appellant/Accused was having an extra-marital affair because of the phone calls which he used to receive from one girl and the Appellant/Accused used to suspect the deceased Jyotika and had wanted her not talk with anyone.

8. In the cross-examination, she has admitted not to have stated in the statement that the deceased had told her that the Appellant/Accused was receiving phone calls from one girl and had shown her the photograph of the Appellant/Accused and his girlfriend and had also shown her a letter written by the girlfriend of the Appellant/Accused. Certain other omissions are brought on record regarding the deceased Jyotika telling the Appellant/Accused not to have any extra-marital affairs and the Appellant/Accused stating that he will be having as many affairs and the deceased Jyotika was no one to question. She has denied the suggestion that the deceased Jyotika had

obtained loan of Rs.30,000/- from Saraswat Bank for her marriage. She has also admitted that she has never personally seen the girlfriend of the Appellant/Accused in the photograph at Exh.22 collly nor has she seen the Appellant/Accused and the girl together.

9. P.W.11, Ankush Sakhalkar, states that his wife P.W.2, Ujwala Sakhalkar, had told him that "Appellant/Accused was not treating the deceased properly". In the cross-examination, he has admitted that P.W.7, Suhas Savordekar, is his relation through his brother P.W.8, Chandrakant Sankhalkar. P.W.8, Chandrakant Sankhalkar, uncle of the deceased Jyotika states that the relations between the Appellant/Accused and the deceased Jyotika were not good. On 31st August, 1999, deceased Jyotika had informed him on telephone that the Appellant/Accused had taken away her daughter and that he would not look after the deceased Jyotika. She had also informed him that the Appellant/Accused had told her that poison which was kept in the house should be consumed by her and that she should die. P.W.8, Chandrakant Sankhalkar, therefore, told deceased Jyotika that he would inform her mother and decide the next course of action. He states that on 1st September, 1999, he went to meet deceased Jyotika and saw the car of the

Appellant/Accused outside and heard a quarrel which was going on inside. He, therefore, returned home. In the cross-examination, he has admitted not to have stated in his statement that when he had gone to the house of the deceased Jyotika on 1st September, 1999, he heard the noise of a quarrel and, therefore, returned back.

10. P.W.7, Suhas Savordekar, states that he had met deceased Jyotika on 8th August in the market at Porvorim. Deceased Jyotika is alleged to have informed him that the Appellant/Accused was harassing her and was having an extra-marital affair with another girl and that he was going to marry her. He further states that the deceased Jyotika gave him two photographs, one of a girl and the other photograph of Appellant/Accused and one girl. According to him, the deceased Jyotika had also told him that the Appellant/Accused used to bring the said girl to his flat and used to tell the deceased Jyotika that he would marry the girl and that deceased Jyotika should either leave the house or commit suicide. According to him, the deceased Jyotika had also produced one letter allegedly written by the girl in the photograph. According to P.W.7, Suhas Savordekar, he retained the photographs and the letter promising the deceased to intervene in the matter. He has

identified the letter and the photographs at Exh.22 colly. In the cross-examination, he has admitted that he was not a relative of the deceased Jyotika till her death when she used to visit the Office of a newspaper where she was working. He has admitted that the younger sister of the deceased Jyotika, P.W.4, Trupti Sakhalkar, is his daughter-in-law. He has admitted not to have stated in his statement that the deceased Jyotika had told him that the Appellant/Accused was bringing the girl in the photograph to his flat and had told the deceased Jyotika that he would marry the said girl and that the deceased Jyotika must either leave the house or should commit suicide.

11. The prosecution has also examined P.W.6, Edwin Pinto, a neighbour of the Appellant/Accused who had taken deceased Jyotika to the hospital. In the cross-examination, he has admitted that the relations between the Appellant/Accused and the deceased Jyotika were normal. P.W.9, Virendra Anthony Thomas, is a builder who had constructed the building where the Appellant/Accused had a flat. He states that prior to her death, deceased Jyotika had approached him for a job and he had asked him the reason why she wanted a job as her husband was earning enough as a businessman. According to him, deceased Jyotika informed him that she was not in good terms with her

husband and that "the relationship was strained and that she wanted to be independent". In the cross-examination, he has admitted that his statement was recorded in November, 1999. He has admitted not to have stated in his statement that deceased Jyotika had stated that her relations with the Appellant/Accused was strained and that she wanted to be independent. P.W.10, Sunita Siriskar, a friend of the Appellant/Accused and deceased Jyotika, had visited deceased Jyotika in the hospital. In the cross-examination, she has admitted that the relations between the Appellant/Accused and the deceased Jyotika were "Okey". P.W.16, Ganpat Patil, states that on 16th August, 1999, a complaint Exh.21 addressed by deceased Jyotika was marked to him for inquiry. On 18th August, 1999, he called deceased Jyotika and her husband and recorded the statement of Jyotika. The statement of Jyotika is at Exh.60. He further states that he warned the husband of Jyotika/Accused not to harass Jyotika. In the cross-examination, he has stated that Exh.21 was brought by Jyotika to the Police Station. He has also admitted that the written complaint was handed over to the P.I. and he had directed him to enquire. He has also admitted that he had also warned Jyotika to stay with her husband peacefully. He did not record the statement of the Appellant/Accused. In the statement at Exh.60 which

is stated to be signed by deceased Jyotika, she has stated that on 9th September, 1999, the Appellant/Accused left the house stating that he did not want to stay with her and would be sending a divorce notice. She has further stated that on 13th August, 1999, during her absence, the Appellant/Accused came and opened the door of the house and damaged some bottles. On 14th August, 1999, she had telephoned the Appellant/Accused in his Office and had enquired with him the reason for breaking the bottles and he had replied that he does not want to compromise the matter and wanted his clothes and household things etc. It is further stated that she decided to stay alone with her daughter because the Appellant/Accused is not co-operating with her and is unfaithful to her and also he is a very narrow minded person and suspected her character. In the last para, it is stated that the Appellant/Accused has not demanded any gold ornaments or any cash in the form of dowry but picks up quarrels with deceased Jyotika when she objected him from keeping relations with other girls.

12. The Appellant/Accused examined himself as D.W.1 and produced on record certain documents to show that he had been regularly giving money to deceased Jyotika. The documents pertained to the investment

and the insurance also in the name of deceased Jyotika. He has also produced on record Exh.73, the Income Tax Pan card. He has stated that whenever deceased Jyotika used to return from her mother's place, she used to be tensed. Her mother used to demand money from her and that was the reason for tension. Deceased Jyotika had obtained loan from Saraswat Bank and the Appellant/Accused had stood surety. This loan was taken by deceased Jyotika for the marriage of P.W.4, Trupti Sakhalkar. The application for loan is at Exh.75. Exh.76 is the Money Order coupon of having sent Rs.400/- by Money Order to the deceased Jyotika at Karwar. According to him, one week prior to the suicide, deceased Jyotika was tensed and after the incident, he has learnt that deceased Jyotika was in the family way and had aborted the child without his knowledge. He has denied of having received any letter at Exh.22 from a girl called Nadia.

13. D.W.2, Vishal Mulgaonkar, was working with the Appellant/Accused at the relevant time. He has stated that he had never seen any quarrels or hot discussions between the Appellant/Accused and his wife. In the cross-examination, he was shown the photograph at Exh.22 and he was unable to identify the

girl in the said photograph. He has also stated that no girl used to come to meet the Appellant/Accused.

14. D.W.3, Sandeep Walwaikar, states that he knew the Appellant/Accused in the past about 10 years as he was a frequent visitor to the house of the Appellant/Accused. He has also stated that the relations between the Appellant/Accused and his wife were good.

15. Mr. S. G. Dessai, learned Senior Counsel appearing on behalf of the Appellant/Accused has urged that the evidence of the prosecution falls short of proving the offences alleged against the Appellant/Accused. According to him, the presumption under Section 113-A stands rebutted in view of the evidence on record.

16. Mr. S. N. Sardesai, learned Public Prosecutor appearing on behalf of the State has supported the Judgment and has urged that the Appeal be dismissed.

17. Perusal of the evidence of P.W.2, Ujwala Sakhalkar, would show that the Appellant/Accused was not ill treating the deceased Jyotika on account of any demand for dowry or on account of demand for any

money. According to her, the main reason for the quarrel between the Appellant/Accused and deceased Jyotika was on account of deceased Jyotika suspecting the Appellant/Accused of having illicit relations with some lady. The evidence of P.W.4, Trupti Sakhalkar, is also on the same lines. In addition, she says that the Appellant/Accused was also suspecting the character of deceased Jyotika. Material omissions are brought out in respect of the letter and the photograph at Exh.22. P.W.7, Suhas Savordekar, also states that deceased Jyotika had informed him that she was suspecting the Appellant/Accused of having illicit relations with one girl. He has, however, exaggerated by stating that deceased Jyotika had told him that the Appellant/Accused was bringing the said girl to his flat. This aspect has been brought out by way of omission. P.W.8, Chandrakant Sankhalkar, uncle of deceased Jyotika also states about the relations between deceased Jyotika and the Appellant/Accused not being "good". P.W.2, Ujwala Sakhalkar, refers to some stray incidents about the Appellant/Accused once slapping deceased Jyotika. Apart from this, no incident is alleged immediately prior to the death of deceased Jyotika. The statement recorded by P.W.16, Ganpat Patil, at Exh.60 would show that there was some tension between the Appellant/Accused and deceased Jyotika and there was some talk of separation. It

appears that both of them were suspecting the fidelity of each other. The prosecution has also not been able to conclusively establish that the Appellant/Accused was having illicit relations with any lady or with a lady named Nadia. The letters at Exh.10 collly alleged to have been written by deceased Jyotika do show that a lady was telephoning the house of the Appellant/Accused. Apart from this vague evidence, there is nothing on record to conclusively reach to a finding that the Appellant/Accused was having illicit relations with any particular lady. The finding of the learned Trial Court at para 24, therefore, that the Appellant/Accused was having extra-marital affair due to which he was harassing the deceased Jyotika and was not wanting her to live cannot be sustained.

18. Cruelty under Section 498-A of the Indian Penal Code has to be distinguished from the mental agony or the mental tension which is caused to either spouse as a result of the break down of the marriage. If the relations between the husband and wife are strained, their relations with each other is bound to cause some sort of mental agony or mental tension. Frequent quarrels between husband and wife is not strange nor can a presumption of cruelty be drawn merely on the basis of frequent disagreements resulting in may be heated discussions between the

husband and wife. The cruelty which is contemplated under Section 498-A of the Indian Penal Code is of a higher degree than the normal "wear and tear" of married life. Section 498-A contemplates a wilful and a deliberate conduct on the part of the Appellant/Accused. In the present case, from the evidence, it emerges that the bliss of the married life between the Appellant/Accused and deceased Jyotika lasted for some time and thereafter, on account of the deceased suspecting the Appellant/Accused of having illicit relations with a lady, the relations became strained. The quarrels between the deceased Jyotika and the Appellant/Accused were the outcome of such doubts being expressed by the deceased. The learned Trial Court has rightly rejected the photograph and the letter at Exh.22 as inadmissible. It is quite likely that a hypersensitive person or a person suffering from insecurity was likely to interpret the telephone calls made by a lady to her husband as factors indicating the husband having illicit relations. There is no positive evidence on record to come to a finding that the Appellant/Accused was having illicit relations with the deceased. The evidence so far also does not indicate that this was a conduct designed by the Appellant/Accused to drive the deceased to commit suicide. The suicide note also throws no further

light. All that it indicates is that the deceased is fed up and wants to end her life. This appears to be as a result of the strained relations between the deceased and the Appellant/Accused.

19. The Supreme Court in *Jansvi v. State of Madhya Pradesh* has held that the word "instigate" denotes incitement or urging to do some drastic or invisible action or stimulate. Persons of mens rea therefore, is the necessary concomitant of instigation.

20. In the present case, the evidence as adduced by the prosecution does not even remotely bring out the ingredients of either Sections 498-A or 306 of the Indian Penal Code. The suicide note indicates that the deceased was depressed. One possible reason could be because of the strained relations between the deceased and Appellant/Accused which had probably reached to a virtual break down of their marriage. Merely because there used to be quarrels between the deceased and the Appellant/Accused would not mean that the Appellant/Accused had treated the deceased with cruelty within the meaning of Section 498-A of the Indian Penal Code. According to me, therefore, the conviction of the Appellant for the offence

aforestated is wholly unsustainable and deserves to be quashed and set aside.

21. Criminal Appeal No. 19 of 2002 is allowed. The Judgment of the learned Trial Court is hereby quashed and set aside and the Appellant/Accused is acquitted of the offences with which he was charged and convicted. Bail Bonds stand cancelled. Fine, if paid be returned to the Appellant/Accused.

P. V. HARDAS, J.

RD.